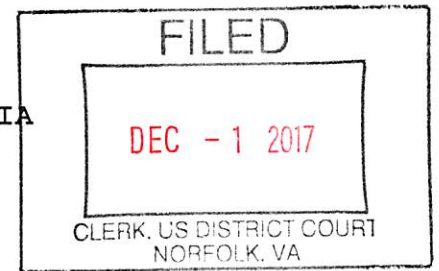


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



WESLEY THOMAS GALLOP, JR., #1071140

Petitioner,

v.

ACTION NO. 2:16cv596

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 and the Respondent's Motion to Dismiss the Petition. In his Petition, the *pro se* Petitioner alleges violations of his constitutional rights in relation to his conviction for possession of heroin with intent to distribute as a second or subsequent offense on December 19, 2011, in the Circuit Court for the City of Chesapeake, which resulted in four (4) years and two (2) months active sentence in the Virginia state penitentiary.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and

Recommendation filed June 23, 2017, recommends dismissal of the Petition with prejudice. On July 12, 2017, the Petitioner timely filed objections to the Report and Recommendation. In addition, Petitioner filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit. Any further action by this Court was stayed pending the outcome of Petitioner's appeal. On November 11, 2017, the Fourth Circuit dismissed Petitioner's appeal.

Now this Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Report and Recommendation filed June 23, 2107.¹ It is, therefore, **ORDERED** that the Respondent's

¹ The Court notes that one of Petitioner's objections is based on the Magistrate Judge's reference, at page 4 of the Report and Recommendation, to an "affidavit" from Petitioner's trial counsel in defense of her performance, which was submitted in Petitioner's state court habeas proceeding before the Chesapeake Circuit Court. ECF No. 23 at p. 2. The document referenced was a letter not submitted under oath, and thus not an affidavit, but had been referred to as such by the state court in its Final Order denying the habeas petition. ECF No. 13, attach. 7 at 5. This Court does not consider the Magistrate Judge's reference to this document to be a finding that the letter was, in fact, an affidavit, but rather considers it to be part of the description of the proceedings in the state court which reviewed Petitioner's habeas claim. In any event, the Magistrate Judge correctly concluded that the question of whether the Chesapeake Circuit Court committed any error in Petitioner's state court habeas proceeding is unreviewable in a federal habeas petition. See Lawrence v. Branker, 517 F.3d 700, 717 (4th Cir. 2008) ("even when there is some error in state post-conviction proceedings, a petitioner is not entitled to federal habeas relief because the assignment of error relating to those post-conviction proceedings represents an attack on a

Motion to Dismiss, ECF No. 12, be **GRANTED**, and that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of the Respondent. The Petitioner's Motion to Appoint Counsel, ECF No. 22, is **DENIED** as moot.

The Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for the Respondent.

It is so **ORDERED**.

/s/MSD
Mark S. Davis
United States District Judge

MARK S. DAVIS
UNITED STATES DISTRICT JUDGE

December | , 2017

occurring in a state post-conviction proceeding cannot serve as a basis for federal habeas corpus relief.")).